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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/783,332	02/20/2004	Jang Choul Shin	CU-3594 RJS/WWP	6890
26530	7590	10/04/2005	EXAMINER	
LADAS & PARRY LLP 224 SOUTH MICHIGAN AVENUE SUITE 1600 CHICAGO, IL 60604			BOYD, JENNIFER A	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 10/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/783,332

Applicant(s)

SHIN, JANG CHOUL

Examiner

Jennifer A. Boyd

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claim 1 is indefinite because the term “ring-type” knitting machine is not known in the art. Based on Applicant’s description, the Examiner believes that the Applicant intends to claim a “circular” knitting machine. For purposes of examination at this time, the Examiner will assume the Applicant intends to claim a “circular” knitting machine. Please clarify. Furthermore, the use of the phrases “sol-type” and “ring-type” render the claim indefinite because the claims would include elements not actually disclosed (those encompassed by “type”), thereby rendering the scope of the claim unascertainable. For purposes of examination at this time, the Examiner will not give weight to the term “sol-type”. Please amend.

### *Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Grunfeld (US 5,198,288) in view of Quinnen (US 4,613,336).

Grunfeld is directed to a knit fabric with elastic combination yarn (Title) suitable for knitted products such as sweaters, socks, skirts, dresses and the like (column 1, lines 55 – 60). The knit fabric is of a known type that comprises an inelastic yarn and a combination yarn (column 1, lines 55 – 60). The elastic yarns comprise yarns of rubber, spandex or other elastomeric fiber which can be covered, plaited, core-ply spun, air-jet entangled, air-jet intermingled or the like with conventional textile fibers such as cotton to form the combination elastic yarn (column 3, lines 5 – 15). The textile yarns can be used to create a knitted fabric by using a circular knitting machine (column 3, lines 20 – 30). It should be noted that the recitation of “for producing cotton denim jeans” is not given patentable weight at this time since the prior art meets the structural and/or chemical limitations set forth and there is nothing on record to evidence that the prior art product could not function in the desired capacity. The burden is shifted upon the Applicant to evidence the contrary.

Grunfeld fails to teach that the cotton portion of the combination yarn can be dyed with natural indigo dyestuffs of blue or black.

Quinnen is directed to a knitted fabric suitable for clothing produced from indigo-dyed cotton yarn (Abstract). It should be noted that indigo dye is commonly known in the art to be blue in color.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use indigo dyes as suggested by Quinnen to dye the cotton portion of the

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combination yarn of Grunfeld motivated by the desire to create an aesthetically pleasing knitted product suitable for clothing made by commonly employed methods.

Please note that even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same or an obvious variant from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). The burden has been shifted to the Applicant to show unobvious differences between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289, 292 (Fed. Cir. 1983).

It should be noted that the “spandex features and peculiar functions of preventing creases and friction with the skin” is considered to be inherent to the prior art product since the prior art meets the structural and/or chemical limitations set forth. The burden is shifted upon the Applicant to evidence the contrary.

6. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Strauss et al. (US 5,050,406) in view of Quinnen (US 4,613,336).

Strauss et al. is directed to a fabric for recreational clothing (Title). The knit fabric is made of a combination of a corespun yarn having a core of a resilient filament yarn covered by a cotton fiber and a cotton yarn (Abstract). The resilient core can comprise spandex, etc. (column

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3, lines 35 – 50). The fabric can be knitted using a swiss pique stitch (column 4, lines 55 – 60), which is known in the art to be a type of circular knit. Strauss teaches that the high percentage of cotton facilitates the dyeing of the fabric as cotton is easily dyed in a single bath dyeing process (column 4, lines 1 – 10). It should be noted that the recitation of “for producing cotton denim jeans” is not given patentable weight at this time since the prior art meets the structural and/or chemical limitations set forth and there is nothing on record to evidence that the prior art product could not function in the desired capacity. The burden is shifted upon the Applicant to evidence the contrary.

Strauss fails to teach that the cotton portion of the combination yarn can be dyed with natural indigo dyestuffs of blue or black.

Quinnen is directed to a knitted fabric suitable for clothing produced from indigo-dyed cotton yarn (Abstract). It should be noted that indigo dye is commonly known in the art to be blue in color.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use indigo dyes as suggested by Quinnen to dye the cotton portion of the combination yarn of Grunfeld motivated by the desire to create an aesthetically pleasing knitted product suitable for clothing made by commonly employed methods.

Please note that even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process

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claim is the same or an obvious variant from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). The burden has been shifted to the Applicant to show unobvious differences between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289, 292 (Fed. Cir. 1983).

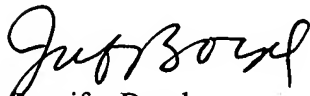
It should be noted that the “spandex features and peculiar functions of preventing creases and friction with the skin” is considered to be inherent to the prior art product since the prior art meets the structural and/or chemical limitations set forth. The burden is shifted upon the Applicant to evidence the contrary.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer A. Boyd whose telephone number is 571-272-1473. The examiner can normally be reached on Monday thru Friday (8:30am - 6:00pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jennifer Boyd  
September 29, 2005

  
**Ula C. Ruddock**  
Primary Examiner  
Tech Center 1700